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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,038	11/26/2003	Ron Pickarski	4215EC-1	7799

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/723,038	PICKARSKI, RON	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) _____ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, it is not clear from the claims what the amount of hydrated plant protein is based on (i.e. about 65% to about 85% in claim 1). Is this the amount by weight in the meat alternative as a whole or does it relate to the primary animal protein or slurry portion of the meat alternative.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6-8, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Brander et al.

Brander et al discloses a meat alternative comprising a primary animal protein (e.g. 20-30%) and and containing water (e.g. 46%) and plant protein source (e.g. soy isolate and others, including vegetable type protein) wherein the plant protein source is inherently hydrated and thus makes up the amount called for in the instant claims (e.g. 46% water, 11% soy isolate, 7% other protein – totaling about 65%) and wherein said meat alternative further comprises collegan and said animal protein inherently acts to flavor the meat alternative, particularly when used in such high amounts (see cols. 2 and 3; Examples).

It is noted that claim 2 calls for a particular method step of how collagen is attained slurry. Although the method for obtaining the collagen differs between the instant invention and that of Brander et al (e.g. Brander et al just adds the collagen), it is not seen where the product of each differ.

Brander et al further discloses the presence of a variety of other ingredients as called for in the instant claims (e.g. col. 2 and 4) including a gelling agent (e.g. starch, 1.5%), fat (e.g. oil, as low as 10%), additional meat flavoring (e.g. beef extract, 3.6 %), and plant-based flavoring (e.g. onion, 5.32%).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brander et al taken together with Yamada.

The claims further call for the presence of dietary fiber and the particular amount of each. However, it is well known to employ dietary fiber in meat analogs as taught, for example, by Yamada. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same as a matter of preference in providing such material to contribute to the texture and integrity of the meat analog (see col. 9, lines 12-13). As for the amount to be used, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amount as a result effective variable depending on the degree of result desired.

7. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brander et al taken together with Katz.

The claims further call for said analog containing a sodium phosphate, the amount of same, and the particular type. Katz teaches a meat analog that includes

sodium phosphate. It would have been obvious to one having ordinary skill in the art to have employed same for the reasons of Katz. As for the particular type of sodium phosphate used, absent a showing of unexpected results, it would have been further obvious to have employed tetrasodium pyrophosphate as a matter of preference depending on cost, availability, etc. Moreover, it would have been further obvious to have arrived at the particular amount as claimed as a result effective variable depending on the amount of result desired.

Conclusion

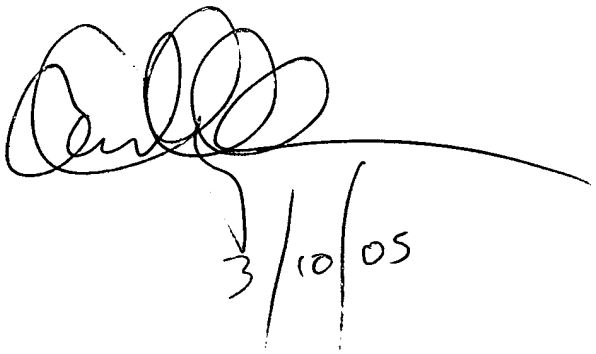
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
March 10, 2005